

# ARKANSAS SUPREME COURT

No. CR 08-928

DONNA SUE MARS  
a/k/a DONNA SUE TURNER  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered      November 6, 2008

PRO SE MOTIONS FOR EXTENSION  
OF TIME TO FILE APPELLANT'S  
BRIEF [CIRCUIT COURT OF  
BENTON COUNTY, CR 2006-73, HON.  
DAVID S. CLINGER, JUDGE]

APPEAL DISMISSED; MOTIONS  
MOOT.

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## PER CURIAM

Appellant Donna Sue Mars, who is also known as Donna Sue Turner, was convicted of rape and exposing another person to the human immunodeficiency virus. She was sentenced to an aggregate term of 192 months' imprisonment. No appeal was taken from the judgment of conviction, which was entered-of-record on December 20, 2006.

On April 12, 2007, appellant filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rules of Criminal Procedure 37.1, seeking to vacate or modify the judgment. The petition was denied on the grounds that it was not timely filed. Appellant lodged an appeal from the Rule 37.1 order in this court and now seeks in two pro se motions an extension of time to file her brief-in-chief.

As the trial court did not err when it declared the Rule 37.1 petition to be untimely filed, the appeal is dismissed. The motions for extension of time are moot. This court has consistently held

that an appeal from the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (per curiam); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam).

Petitions under Rule 37.1 must be filed in the trial court within ninety days of the date the judgment of conviction was entered if the convicted defendant did not pursue a direct appeal of the judgment. Ark. R. Crim. P. 37.2 (c). The time limits set out in Rule 37.2 (c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). Appellant filed her petition under the rule 117 days after the judgment in her case was entered. Accordingly, the trial court was correct to dismiss the petition, and there is no basis for an appeal.

Appeal dismissed; motions moot.